Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the	)	
Interstate Interexchange Marketplace	)	CC Docket No. 96-61
	)	
Implementation of Section 254(g)	)	
of the Communications Act of 1934,	)	
As Amended	)	

COMMENTS OF SBC WIRELESS, INC.

SBC Wireless, Inc. files these Comments in response to the Federal Communications Commission's Further Notice of Proposed Rulemaking[1] regarding the imposition of further rate regulation on commercial mobile radio service (CMRS) carriers by expanding the applicability of "rate integration" requirements. As discussed in the Petitions for Reconsideration and Petitions for Forbearance, rate integration requirements for wireless are unnecessary given the competitive nature of the ever-expanding wireless marketplace. SBC Wireless does not agree with the decision to impose rate integration requirements on the competitive CMRS marketplace.[2] SBC Wireless, however, appreciates the Commission's reluctance to impose such requirements arbitrarily on all aspects of wireless service. Thus, SBC Wireless appreciates the issuance of the Further Notice of Proposed Rulemaking to examine whether rate integration requirements should

[1] In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace — Implementation of Section 254(g) of the Communications Act of 1934, As Amended, CC Docket No. 96-61, Further Notice of Proposed Rulemaking, ("FNPRM"), released April 21, 1999.

[2] In the Matter of Policy and Rules Concerning the Interstate Interexchange Marketplace — Implementation of Section 254(g) of the Communications Act of 1934, As Amended, CC Docket No. 96-61, Memorandum Opinion and Order ("CMRS Rate Integration Order"), released December 31, 1998.

be applied across wireless affiliates, applied to wide-area calling plans, applied to roaming scenarios and across cellular and personal communications services (PCS) affiliates.

Competition and its effect on prices and customer choice are readily apparent in the wireless marketplace as evidenced by a simple glance through the local Sunday newspaper. The Commission has recognized the effect of competition — subscriber rates are going up and prices are coming down.[3] Approximately 60 percent of the population can choose among 5 or more wireless carriers.[4] This success has been spurred by the flexibility granted to the wireless carriers in determining rates, calling scopes and service packages. Given the success of minimal regulation and its effect on competition in the wireless marketplace, the Commission should exercise extreme caution to avoid imposing mandates that have the effect of regulating rates, calling scopes and service packages. If the Commission believes that there is a need to achieve the objectives of the rate integration policy in regards to CMRS service then, as Commissioner Powell notes, the real inquiry should be, whether there are more narrowly tailored ways to achieve such objectives. In the CMRS Rate Integration Order, the Commission opined that "rate integration is necessary to ensure that nondiscriminatory charges are offered with respect to CMRS services to and from the offshore points."[5] Simply requiring carriers to have nondiscriminatory charges within a licensed service area for CMRS service to offshore points accomplishes the objective — mandating the same charges across wireless affiliates throughout the United States, across roaming agreements thus

[3] Speech of FCC Chairman Kennard, "Crossing Into the Wireless Century," as delivered to the CTIA Convention (February 9, 1999).

[4] Source: Cellular Telecommunications Industry Association.

complicating and possibly even destroying innovative wide area calling plans and calling packages is overkill.

I. Rate Integration Requirements Should not be Applied to Wide Area Calling Plans

As competition has increased wireless consumers have benefited not only from falling prices but also from the advent of wide-area calling scopes whereby the wireless carriers attempt to distinguish themselves from one another based on the size of the calling area in which the customer does not incur a roaming charge, a long-distance charge or both. For example, AT&T Wireless offers its "One-Rate" in advertisements proclaiming no roaming or long distance charges in all fifty states. Sprint PCS has its "Free and Clear" plan proclaiming to allow no long distance or roaming charges on calls placed anywhere on their network. SBC Wireless' subsidiaries likewise offer plans and packages which include no additional long distance charges when calling from specific areas to anywhere in the fifty states, the U.S. territories and possessions, flat rate roaming packages and no or reduced roaming charge packages. SBC Wireless' subsidiaries, like other licensees, have extended special calling plans beyond their traditional licensed service areas to include nearby areas of common interest. For example, SBC Wireless offers rate plans with no long distance charges when calling from within the caller's home calling scope to anywhere in the fifty states or the U.S. territories and possessions. The development of the various wide-area calling plan gives the wireless customer flexibility to choose the carrier and plan which best suits the individual's anticipated use of the phone, calling patterns and roaming patterns.

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[5] Memorandum Opinion and Order, para. 30.

Against this backdrop of flexibility and customer choice from wide-area calling plans comes the question of whether the Commission should attempt to graft the traditional landline concepts "telephone exchange service" and "telephone toll service" so as to decide how rate integration concepts should be imposed on such plans.[6] The simple answer is that the Commission should not allow the pro-consumer benefits of wide-area calling plans and other such service packages to be destroyed by the application of rate integration policies on such plans.

As previously argued by the CMRS industry, and apparently agreed to by Alaska, a wireless carrier should be able to establish its "exchange" area or footprint.[7] SBC Wireless strongly objects to the notion that an "exchange" can be defined merely by reference to MTA boundaries. Such a notion ignores the fact that RSA licenses do not coincide with MTA boundaries and thus an RSA such as Illinois RSA 4 operated by an SBC Wireless subsidiary is located in two MTAs. Likewise, many cellular carriers combine RSA and MSA licenses to compete against the larger MTA licenses granted to the PCS providers. Adopting an MTA as an "exchange" would be discriminatory and arbitrary. The public has benefited from the ability of a carrier to decide the particular local calling area associated with its license, a decision which is motivated by the need to be competitive and resulted in the establishment of wide-area calling plans. Such a decision should continue to be based on competitive forces – not be mandated merely to meet a rate integration paradigm.

[6] FNPRM, paras. 11-14.

[7] FNPRM, para. 11.

In the alternative, the Commission should forebear from applying its rate integration requirements on wide-area calling plans. The Commission forbears if it determines that 1) enforcement is not necessary to ensure that rates are just and reasonable and not unjustly and unreasonably discriminatory; 2) regulation is not necessary to protect consumers and 3) forbearance is consistent with the public interest.[8] The Commission acknowledges that "wide area calling plans appear to offer customers significant benefits in the form of a simplified rate structure and additional choice."[9] Competitive forces mandate that the wide area calling plans are just and reasonable — otherwise the customer merely goes to one of the other wireless carriers. SBC Wireless' wide area calling plans do not single out Hawaii, Alaska, or the U.S. Territories or possessions for disparitive treatment and SBC Wireless is unaware of any wide-area calling plan that does. The public has benefited from wide area calling plans and forbearance is consistent with such public interest. Requiring wireless carriers to dismantle wide-area calling plans, create different elements of wide-area calling plan charges based on artificial boundaries or arbitrary definitions of exchanges or decide on whether to discontinue regional wide area calling plans in lieu of making them nationwide would be contrary to the public interest.

II. The Commission Should Not Mandate Identical Long Distance Rates Across all Wireless Affiliates.

The difficulty in imposing the rate integration policies established by this Commission for the interexchange carriers on CMRS providers is especially magnified when applied to the Commission's policies requiring rate integration across affiliates.

[8] CMRS Rate Integration Order, para. 26.

[9] FNPRM, para. 11.

The Commission notes that in the past it has treated all of AT&T's regional interexchange companies as a single entity for purposes of rate integration. The Commission notes that otherwise AT&T could have used a different rate structure "thereby frustrating rate integration between mainland U.S. points and Alaska, Hawaii and the U.S. Virgin Islands."

Applying such a true interexchange carrier paradigm across all wireless affiliates and thus requiring the same long distance rates in all markets served by the carrier overlooks the competitive nature of the wireless market and the fact that long distance is merely a part of the CMRS service. Congress specifically stated that CMRS carriers are not required to provide equal access to interexchange carriers.[10] A contributing factor to the success of competition in wireless is that markets are distinct with differing competitors and differing competitive pressures. Rate plans, calling scopes and service packages vary not only by carrier within a market but also by affiliate of the carrier between markets. Such flexibility amongst subsidiaries is necessary because carriers have different competitors in different markets.

Expansion of the "rate integration across affiliates policy" to encompass wireless carriers thus requiring identical long distance rates throughout a carrier's "affiliated" markets is a dangerous proposal. As the Commission recognizes, too stringent of an affiliation standard could result in an unworkable rule that could "adversely effect pricing and customer choice given the complex nature of the CMRS market."[11]

As the Commission recognizes, the wireless industry is extremely intertwined. For example, SBC Wireless subsidiaries are involved in partnership license arrangements

[10] 47 U.S.C. § 332(c)(8).

with AT&T Wireless, U.S. Cellular, BellSouth, GTE Wireless, Alltel Mobile Communications, Inc and Dobson Cellular Systems, Inc. In fact, of the 108 licenses which SBC Wireless subsidiaries operate 73 are held in partnership. The existence of fiduciary duties owed to the Partnership places the operating carrier in a precarious position if rate integration requirements across affiliates is expanded thus requiring all wireless affiliates to charge the same rate. The fiduciary duty of partners is owed regardless of the "ownership interest" or positive or negative control. An expansion of the rate integration across affiliate requirements to include all wireless affiliates would place a carrier in the unenviable position of having to weigh the interests of all partnerships it operates—RSA, MSA and MTA—rural areas and metropolitan areas to determine the one rate for long distance for all its partnership markets. Determining such a rate given the differing competitors, differing rate plans and differing level of competition in each market would be a difficult and unenviable task even without partnership concerns.

The Commission should recognize the distinctions between the traditional interexchange carrier market that gave rise to the need for the "rate integration across all affiliates rule" and the wireless market and determine that the policy should not be extended across all wireless affiliates. In the alternative the Commission should forebear from imposing the policy on wireless carriers. Enforcement of the affiliate rule is not required to ensure that rates are just and reasonable because the competitive market will ensure that rates are just and reasonable. If Carrier 1 is charging a long distance rate that the customer feels is too high, the customer can go to Carriers 2, 3, 4 or possibly 5. If long distance is important to the customer, they are likely to choose one of the all

inclusive rate plans. The customer also has the option of placing the call using a calling card. Further, the rule requiring the same rate across affiliates does not assure that rates are reasonable — merely that they are the same across affiliates. Enforcement of the affiliate policy is also not necessary to assure that rates are not unreasonably discriminatory because there is no requirement that CMRS rates must be the same amongst differing licensed service areas—charging a rate in Market A does not create any obligation to charge that rate in Market B. Finally, forbearance is in the public interest because it allows the carrier to adjust its prices based on competition at the lowest level — the licensed service area. Thus, carriers will be less inclined to merely set a rate for long distance at the national level but will be more willing to adjust long distance rates as they see fit at the local level as one more pricing tool to differentiate themselves and attract customers.

III. Rate Integration Requirements Should Not Be Extended to The Roaming Context.

A key to the success and widespread popularity of wireless service is the ability to roam — that is the customer's ability to use the phone when traveling outside the home carrier's market on another carrier's system. The robust roaming wireless enjoys today, including automatic roaming, the wide-area calling plans, flat rate roaming and one-rate plans all developed without regulatory mandates beyond the requirement that a carrier allow roaming pursuant to 47 C.F.R. § 20.12. The Commission should refrain from attempting to regulate or in any way "unbundle" the prices charged in this area as it could lead to many of the same pitfalls of attempting to regulate or "unbundle" wide-area calling plans through rate integration requirements. The result would be less innovative plans, less customer choice and less simplistic all-inclusive plans.

The difficulty in attempting to impose rate integration requirements in conjunction with roaming is that roaming charges vary by market and are charged to the home carrier. Although some carriers may choose to do so on some rate plans, the home carrier is not required to pass through the rate charged by the visited carrier thus leading to the innovative wide-area calling plans and flat rate roaming plans. In other words, the carrier may simply absorb the cost if it exceeds the flat rate or one-rate being charged to the customer. Again, if the Commission feels that it must mandate regulation in this area, such regulation should focus narrowly on the harm it perceives can occur — preventing differing charges for off-shore calls does not require a dismantling of roaming or the establishment of uniform rates throughout the United States thus destroying innovation and diversification. If there is evidence that such activity is occurring the Commission can simply prohibit such discrimination by ruling that the same toll rate, if postal rates are used, or methodology if bands are used, applies regardless of whether the call is to Hawaii, Alaska, the territories or possessions.

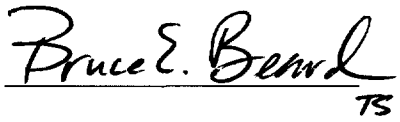
IV. Cellular and PCS Should Not Be Integrated.

The FNPRM inquires whether the rates of PCS and cellular should be integrated. SBC Wireless operates both traditional cellular markets and PCS markets. The approach to the marketing of the services, the rate plans offered and the technology used (TDMA versus GSM) is different. Similarly, the competitive strategies of a new entrant are different than an incumbent carrier. Therefore, the Commission should not require integration of cellular and PCS.

CONCLUSION

For the reasons stated herein the Commission should refrain from further expanding the applicability of CMRS rate integration as suggested in the FNPRM.

SBC WIRELESS, INC.



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